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Research Director
Agriculture and Environment Committee
Parliament House
BRISBANE QLD 4000

BY POST/EMAIL – vminquiry@parliament.qld.gov.au

Dear Committee,

Vegetation Management (Reinstatement) and Other Legislation Amendment Bill

This submission is made to you following an examination by the Urban Development Institute of Australia (Qld) (the Institute) of the contents of the Vegetation Management (Reinstatement) and Other Legislation Amendment Bill 2016 (Bill).

After a thorough review of the contents of the Bill, the Institute is strongly opposed to the Bill and calls on the Committee to reject the Bill in its entirety. If passed, the proposed amendments will directly affect our members' ability to plan, design and deliver appropriate, diverse and affordable housing for Queenslanders, and importantly, impact on lending decisions made by financial institutions. As outlined UDIA (Qld)'s detailed submission below, the proposed amendments to the Offsets Act in particular has the potential to add up to an **extra $67,900 to the cost of new housing in Queensland**. This will render important developments unviable in key growth regions and pose a significant risk to operation of the development industry and provision of affordable housing in Queensland. It will significantly constrain the delivery of new housing in both greenfield and infill areas and further threaten the delivery of affordable housing which is in direct conflict to the intent of the Queensland Government's Housing Affordability Strategy. This will have a **direct impact on jobs** and further reduce Queensland's competitiveness with other States.

While the Institute broadly supports environmental protection measures, the Government's Bill is ill considered in regard to urban development and threatens the viability of the property and construction industry. Uncertainty, additional prescription and complexity will result in perverse outcomes and threaten the delivery of diverse housing and thriving communities. It also threatens to compromise the Government's planning reform and South East Queensland regional planning efforts, resulting in a more complex and uncertain system.

The role of the property development industry in driving growth and jobs cannot be understated. UDIA (Qld) research reveals that Queensland's property development industry typically ranks as the fourth largest contributor to Gross State Product (GSP) and jobs. Approximately one in ten Queensland workers is employed in property development and many more jobs are indirectly created and sustained from property development. For every $1 million in turnover generated by Queensland's development industry, three direct full time equivalent jobs are created and sustained.[1] Not only is the continued health of the property development industry important for growth and jobs, it is essential for generating the revenue required to deliver community services and build productivity enhancing infrastructure.

[1] Economic Impact of the Development Industry in Queensland (Applied Economic Research, 2012)

More than ever, Queensland's future economic prosperity and the subsequent sustainability depend on our ability to boost productivity, growth and employment in the non-mining sectors of the economy. Continued growth of the industry is not assured and continued investment in new housing is needed to ensure the development of new employment centres throughout Queensland is brought forward. To facilitate this and ensure the future supply of more housing and therefore jobs growth, careful consideration is needed of the policy environment.

The following submission is made on behalf of the Institute's members, provides feedback on the Bill and identifies several aspects which are likely to impede the ability of the industry to build affordable and diverse communities and continue to be a leading generator of jobs and economic activity for the State. Development projects are almost without exception funded by lending institutions. A key component of lending criteria is an assessment of the risk and complexity associated with the planning application and approvals process. Any perceived or actual additional complexity or burden imposed by changes to legislation is likely to threaten future investment in Queensland and redirection of those funds to other Australian States.

The Institute's concerns are detailed below, however in summary, relate to:

- An absence of any consultation on the Bill and/or any of the contents of the Bill by any Department involved in the drafting of the proposed amendments.
- The removal of the word 'significant' from the Environmental Offsets Act 2014 threatens to broaden the scope of affected projects and add significant cost to the price of a new dwelling in Queensland and impacting on housing affordability.
- The introduction of a mechanism to allow the Queensland State Government to double dip on environmental offset requirements for the same matter as the Commonwealth, adding complexity, uncertainty and significant cost to the delivery of new communities.
- The effect of the proposed amendments to the Vegetation Management Act on land currently held outside the urban footprint and future investigation areas, sterilising future urban areas identified in regional plans and constraining the delivery of an appropriate supply of housing to support a growing population.
- Changes to prohibitions which restricts the lodging of a development application on land outside the urban footprint which contains Category B vegetation, regardless of whether the vegetation is to be cleared.
- The sterilisation of the use of high value regrowth as a viable offset option for proponents, unless a significant remediation activity can be delivered, creating uncertainty and funnelling proponents to the financial offset option which is financially prohibitive.

The Institute's concerns are detailed in the attached document. The Institute is appreciative of the opportunity to comment on the Bills and welcomes the opportunity to provide more detailed feedback to the Committee.

Yours sincerely
Urban Development Institute of Australia (Queensland)

Marina Vit
Chief Executive Officer

Consultation

The Institute notes that prior to the introduction of the Bill into Parliament on the 17 March that no consultation on the Bill or its contents was undertaken by any of the relevant Government Departments with our organisation. Further, despite a lengthy consultation process undertaken in 2014 by the Department of Environment and Heritage Protection on the Environmental Offsets Act and associated framework, significant legislative reform is being proposed to the same Act by the Government less than two years later. This significant change will cause disruption and uncertainty within the industry, the community and offset providers.

Reinstatement

The Institute notes that during the Department's briefing to the committee and in subsequent communications, that all aspects of the Bill are represented to be a reinstatement. The Institute strongly refutes this claim, particularly in relation to proposed changes to the Offsets Act 2014. Previously, a complex framework of environmental offsets existed in various forms, including guidelines. The introduction of a dedicated Environmental Offsets Act saw the establishment of a comprehensive environmental offsets framework and calculator. While various aspects included in the Act existed previously under various offsets policies, the proposed amendments cannot be considered to be a reinstatement, particularly for development activity located within the urban footprint.

Amendment of Environmental Offsets Act 2014

General

Institute members in Queensland deliver new communities in accordance with relevant environmental and planning legislation and in general seek to develop in areas such as city locations or sites which have limited ecological value. The delivery of new communities is driven by land identified in regional plans. This balancing of conflicting objectives occurs for a range of valid planning reasons. In urban locations the provisions of the Vegetation Management Act and Environmental Offsets Act should not apply as detailed site requirements and should instead be reflected during the regional planning process, providing greater certainty for all level of Government, developers and the broader community.

The Department of Environment and Heritage Protection notes that the financial settlement option has been utilised to offset a vegetation impact for only a single project since the introduction of the Act. There have however, been numerous other projects which have provided offsets under other methods prescribed under the Act. The slow up-take of financial settlement should not be considered legislative failure but rather reflects the nature of the market including improved rehabilitation arrangements and the cost-prohibitory nature of the financial settlements which in turn leads to proponents preferring proponent-driven offsets methods. It should also be noted that the Department's reporting of vegetation environmental offsets only reflects projects which have been finalised and approved and excludes any projects currently under assessment by Assessment Managers including both the State Government (through the State Assessment and Referral Agency) and Local Governments. This is misleading and a misrepresentation of the actual number of active development projects captured under the existing Act and framework.

Removal of 'Significant'

The Bill proposes changes to the Environmental Offsets Act that will significantly broaden the range of projects that require environmental offsets by reducing the severity of environmental impacts required to trigger an offset. The Bill proposes to omit the term 'significant' (clause 21+) so that a 'residual impact' on

a prescribed matter only, triggers an environmental offset. The Institute understands that this change will also require substantial costs in the rewriting of the current Queensland Government Significant Residual Impact Guidelines (SRI). The process for amending the SRI Guidelines is unclear and it is unclear whether this process will be run concurrently with the Committee review process or will occur following the second reading of the Bill in the House. This amendment is creating significant uncertainty and concern within the development industry and has the ability to have far-ranging consequences on development industry activity and investment in Queensland.

The Institute understands that this change is designed to trigger more environmental offsets and also to require the greater uptake of the financial offsets option. The Institute does not support this change as it will result in vast and unmeasured increase in the liabilities to developers in developing land. This change is rejected as it is:

- unheralded and a reactionary response to a low uptake of financial offsets;
- contrary to the stated intent of the legislation to only reinstate arrangements to those applying prior to the previous government;
- adding complexity and uncertainty to the feasibility, purchase, design and approval of development in Queensland; and
- a large new impost on development that will have serious impacts on the affordability of housing.

The additional cost this proposed amendment would add to development projects is significant. Using the example of a small fragmented area of Endangered RE in an urban area, under current arrangements the clearing of this category of vegetation needs to be greater than 5 hectares before it is considered to be a significant residual impact. Under the proposed changes, an offset for clearing would be triggered, regardless of the size of impact. If a site, located within Brisbane City Council, contained one hectare of endangered RE and required offsetting, the financial settlement liability would equate to $1,018,504. If the development site was two hectares in size and assuming a development yield of 12 dwellings per hectare, the cost of the offset equates to an additional $67,900 per dwelling.

Part 11A Application of Act to Commonwealth offset conditions

The proposed Part 11A establishes a framework to enable Commonwealth required environmental offsets to be delivered by the proponent agreeing to pay a financial settlement to the State Government. While the Institute supports the coordinating intent of this change, to the Institute's knowledge, the Commonwealth's assessment and offset requirements are the preferred option for most proponents. This is because the Environmental Protection and Biodiversity Conservation Act Offsets Policy takes a technical merits based approach giving proponents the opportunity to custom design offset solutions, rather than being required to offset at a generalised offset and relatively high impact area to offset area ratio.

Part 11A, 89C (a)

The proposed section 89C(a) permits the State to reject the acceptance of offset funds relevant to a Commonwealth Offset if the State considers the amount is not adequate or for other reasons. This appears to indicate an offset cost may also be taken by the State Government where the Commonwealth has also taken an offset. The Institute is strongly opposed to this proposed amendment which will cause duplication and potential extension of environmental offset requirements. It also increases process risk, time delays and creates uncertainty for the applicant.

The Institute also notes that the proposed amendment appears to conflict with section 15 of the current Environmental Offsets Acts which restricts the imposition of an offset condition on an authority only if:

> "(a) The same, or substantially the same, impact has not been assessed under a relevant Commonwealth Act; and
>
> (b) the same, or substantially the same, prescribed environmental matter has not been assessed under a relevant Commonwealth Act."

An explicit purpose of the Offsets Act and framework was to deliver a simpler, more flexible offsets regime and streamline the assessment, approval and delivery of environmental offsets in Queensland. During the extensive consultation process on the Offsets framework, the Institute had strongly advocated for ensuring an integrated approach to environmental offsets at all levels of government and a less onerous regulatory burden on the development sector so as to better achieve the dual goals of environmental protection and economic growth.

The Institute considers the proposed amendment is completely contradictory to the intent of the offsets framework and means that a development project may be subject to significant offset burdens by all three levels of government. For example, a large masterplanned project may refer to the Commonwealth for a Matter of National Environment Significance (e.g. Koalas). Following a long and significant application process, with a number of technical reports, the Commonwealth may resolve that the action is deemed to be a controlled action under the Environmental Protection and Biodiversity Conservation Act 1999. The proponent then bears a significant process of assessment and the Commonwealth may approve the project subject to offset requirements including direct and/or advanced offsets or other compensatory measures. If the State is not satisfied that the process and result of the Commonwealth's extensive review of the process achieves the State's desired result, this Bill would seem to allow the State to subsequently seek an offset for the same matter (Koalas) or at least make uncertain arrangements for offset payment. In addition to the State seeking an offset for the matter, the Local Government may also seek payment or works for a Matter of Local Environmental Significance which is aligned with the same matter (e.g. flora species associated with Koalas). The result is that the proponent of the masterplanned community would need to pay or provide environmental offsets and suffer lengthy process delays for substantially the same matter to three separate levels of Government.

This is an unacceptable level of duplication and adds significant process and cost to each development project and subsequently will significantly increase the cost of housing in Queensland.

Amendment of Vegetation Management Act 1999

General

The Institute also considers that the existing Vegetation Management Act and related provisions in other Acts has become overly complex and unwieldy. The legislation lacks simplicity and is nearly impenetrable for the development industry. It includes elements such as 'provision chasing' (where each provision requires checking of other sections and definitions, unclear definitions such as of map categories and numerous multi amended sections like 20AKA that runs to 20ZC and section 22DAA to 22M. The legislation is unclear and causes great uncertainty. Any amendment to the Act should at the very least consider a complete overhaul of the legislation in full to ensure it is able to be interpreted by users.

Ramifications on Urban Areas

The explanatory notes to the Bill indicate the policy objective is to 'reinstate a responsible vegetation management framework'. Such a framework should be aimed at broad scale land clearing and Great Barrier Reef protection rather than having a significant impact on urban development areas.

The proposed reintroduction of controls on high value regrowth clearing on freehold land however is a concern to the Institute regarding how this affects land currently held by its members, zoned for urban purposes. This regrowth vegetation will substantially add to the areas of ecosystem uncertainty in urban areas and that change to subordinate regulation or guidelines and their interpretation can vary significantly, further impacting the future provision of diverse and affordable communities

Particularly this is a concern for the South-East Queensland Regional Plan area that identifies future land supply to accommodate around 75% of Queensland's growing population. High Value Regrowth (Category C) will now be mapped within and in close proximity to a number of urban areas. This is eminently unnecessary given local government planning and environment controls and only serves to destabilise the urban land market. This is particularly critical timing for the review of future land supply given the imminent release of a new South-East Queensland Regional Plan, which is likely to see the extension of the urban footprint. The Bill would likely see substantial additional vegetation/urban development conflict areas included in the expanded urban footprint and subvert the intended housing yields and residential land supply. It must be realised that compact expansions of urban areas are likely far more sustainable than broader, more dispersed additions (as a consequence of greater retention of native vegetation) in meeting population growth needs.

Near urban areas such as future urban areas and future investigation areas are also important growth areas for local government forward urban planning and will also likely be severely constrained by this change. Further, development near existing urban zones is also regularly required to meet community needs, for example in upgrades to existing facilities. The application of the broad scale arrangements of the Vegetation Management Act as made, is poorly suited to operation in or near urban areas. An alternate process under planning schemes or as applies for Priority Development Areas would be more appropriate examples.

Clause 11 Prohibition

The Institute has significant concerns about the proposed changes outlined in clause 11. Amendments to Schedule 1 (Prohibited development) restrict development applications being made outright on land which contains Category B vegetation, even in instances where the Category B vegetation is not being cleared. The Institute is aware of one proposal that has been immediately prohibited by the change, despite the fact that the proposed action would have had no effect on relevant vegetation on the site.

Use of High Value Regrowth as Offsets

The Institute also holds concerns that the amendments to the Vegetation Management Act and the reintroduction of high value regrowth will reduce proponents' ability to use regrowth areas as a proponent-driven offset, thereby further driving projects to the financial settlement delivery option. This is relevant as consequent changes to the Significant Residual Impact Guidelines will remove regrowth as a rehabilitation option.